

AMENDMENTS TO THE DRAWINGS:

The attached drawing sheet includes changes to Fig. 4A. This sheet replaces the original sheet that includes Fig. 4A. In Replacement Sheet 1, Fig. 4a was amended to include a "Prior Art" legend.

Attachments:

One (1) Replacement Sheets

One (1) Annotated Sheet showing change

REMARKS

This communication is a full and timely response to the final rejection dated March 13, 2007. By this communication, Figure 4a is amended. Claims 1-23 remain pending. Reconsideration and allowance of this application are respectfully requested.

Drawing Amendment

On page 2 of the Office Action, the Patent Office suggested that Figure 4a be designated by a "Prior Art" legend. Applicants appreciate this suggestion and have amended Figure 4a accordingly.

Rejections Under 35 U.S.C. §102

Claims 1-10 stand rejected under 35 U.S.C. §102(b) as anticipated by *Kozaki* (U.S. Patent Pub. No. 2002/00536760). Applicants respectfully traverse this rejection.

Applicants believe that the final rejection of claims 1-10 should be withdrawn because of clear errors exhibited in the Office Action.

First, in mapping the disclosure of *Kozaki* to the features of Applicants' claim 1, the Patent Office maps element 162 to Applicants' buried layer, and element 164 to Applicants' protected layer. *Kozaki* discloses that element 162 corresponds to a protective film that is formed on the side faces of a ridge stripe and the plane which continues there from (see *Kozaki* paragraph 171). Moreover, *Kozaki* discloses that element 164 corresponds to a multilayer dielectric film, which is formed on desired region that has been exposed by etching (see paragraph 173). Upon careful review, neither the protective film (162) nor the multilayer dielectric film (164) as taught by *Kozaki* exhibit properties or characteristics that are analogous to Applicants' claimed buried layer. Moreover, the Patent Office has failed to articulate why one of ordinary skill would interpret that Applicants' claimed structural

relationship between the buried layer and protective layer reads on the structural relationship of a protective film (162) and dielectric film (164) as taught in *Kozaki*.

As disclosed in Applicants' Specification, the buried layer is a passivation layer and the protective layer has an etching selectivity and adhesive property through the passivation layer. In contrast, it appears that *Kozaki* discloses that the protective layer 162 protects certain portions of the ridge during an etching process. While element 162 appears to exhibit properties that are similar to those of Applicants' claimed protective layer, there is seemingly no element disclosed by *Kozaki* that embodies the characteristics of Applicants claimed buried layer. As a result, Applicants submit that the *Kozaki* publication fails to explicitly or implicitly disclose the structural relationship between the buried layer and the protective layer as recited in Applicants' claims, and thus does not anticipate Applicants' claim 1.

Applicants' second reason for finding error in the final rejection lies in the Patent Office's response to Applicants' previous arguments. Claim 1 recites, among other elements, an upper electrode formed on the protective layer to contact an upper surface of the ridge through the contact hole. On page 2 of the Office Action, the Patent Office states that when the preposition "on" is given its broadest interpretation, this term does not specify directionally where the electrode is located. Therefore, the Patent Office posits that the term "on the protective layer" can be interpreted to mean "on top of the protective layer" or "on the bottom of the protective layer."

Applicants are fully aware that during examination claims must be given their broadest reasonable interpretation. This "interpretation", however, must be consistent with Applicants' Specification. *Phillips v. AWH Corp.*, 415 F.3d 1403 75 USPQ2d 1321 (Fed. Cir. 2005). In *Phillips*, the Court found that when employing the "broadest reasonable interpretation" standard, **the PTO determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest**

reasonable construction "in light of the specification as it would be interpreted of one of ordinary skill in the art." *In Re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 [70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support for antecedent basis in a description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75 (d)(1), 415 F.3d at 1316, 75 USPQ2d at 1329.

Applicants submit that the PTO has not followed the broadest reasonable interpretation standard set forth by the Federal Circuit. Particularly, Applicants' figures provide a representative structural relationship between each element of Applicants' device. Because the Specification gives clear and concise guidance as to how each feature of Applicants' device, as shown in the figures, is related, Applicants submit that any reasonable interpretation of the claimed upper electrode cannot include it being formed on the bottom of the protective layer as suggested. Stated differently, the broadest reasonable interpretation standard does not allow for arbitrarily rearranging the features recited in Applicants' claim to support a rejection. Accordingly, Applicants request that the rejection of claim 1 and its corresponding dependent claim under 35 U.S.C. §102 be withdrawn.

Based on at least the foregoing amendments and remarks, Applicant submits that claims 1-23 are allowable, and this application is in condition for allowance. Accordingly, Applicant requests a favorable examination and consideration of the instant application. In the event the instant application can be placed in even better form, Applicant requests that the undersigned attorney be contacted at the number below.

Respectfully submitted,

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ANNOTATED SHEET

Appln. Filing Date: March 31, 2004

Title: LASER DIODE AND METHOD OF MANUFACTURING
THE SAME USING SELF-ALIGN PROCESS

Inventor(s): Youn-joon Sung et al.

Appln. No.: 10/813,157

Sheet 1 of 1



FIG. 4A

Prior Art

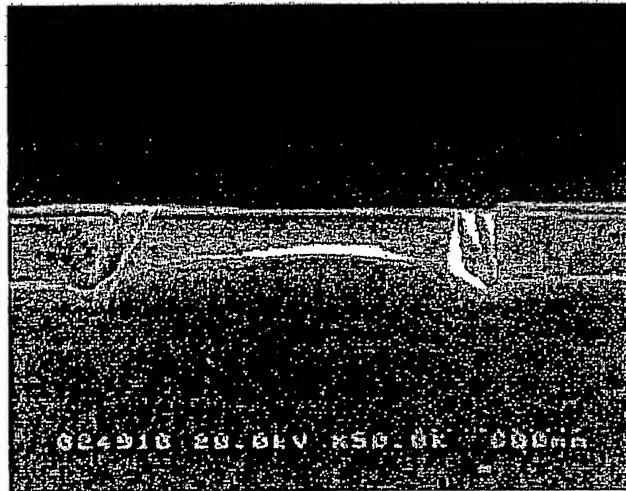


FIG. 4B

